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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,026	12/05/2003	Steven F. Bolling	FORFLOW.1CP6C1	8833
20995	7590	05/10/2005		
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			EXAMINER LAYNO, CARL HERNANDZ	
			ART UNIT 3762	PAPER NUMBER

DATE MAILED: 05/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/729,026

Applicant(s)

BOLLING ET AL.

Examiner

Carl H. Layno *Carl H. Layno 5/5/05*

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3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4 and 7-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4, 7, 8, 10, 11 and 13 is/are rejected.
- 7) ☒ Claim(s) 9, 12 and 14-19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/16/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Acknowledgment is made of applicant's amendment which was received by the Office on March 16, 2005.

2. Claims 1-3, 5, and 6 are canceled. Claims 7-19 have been added. Claims 4 and 7-19 are active.

Information Disclosure Statement

3. Acknowledgment is made of applicant's Information Disclosure Statement (PTO-1449) which was received by the Office on March 16, 2005.

Drawings

4. Applicant's formal drawings, which were received by the Office on December 5, 2003, have been approved by the Examiner.

Specification

5. In view of the applicant's modifications to the Abstract, the Examiner is withdrawing the objections which were made against the specification in the last Office action.

Claim Rejections - 35 USC § 102

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6. In view of applicant's cancellation of claims 1-3, 5, and 6, the Examiner is withdrawing the 35 U.S.C 102(e) rejection based upon the Barbut '356 patent, cited by the applicant as prior art, which was made against claims 1, 2, 5 and 6 in the last Office action.

7. Having reviewed applicant's recently submitted prior art (i.e. the IDS (PTO-1449) filed March 16, 2005), the Examiner has discovered another pertinent reference upon which to base the following new 35 U.S.C 102 rejection.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 4, 7, 8, 10, 11, and 13 rejected under 35 U.S.C. 102(b) as being anticipated by Aldea '957 (Applicant's prior art).

The Aldea '957, cited by the Applicant as prior art, describes a tissue retroperfusion system (Fig.1) including applicant's claimed features of a multi-lumen conduit **10** (Fig.2b) having an inflow ("withdrawal") port **16** (Fig.1) and a tip outlet ("infusion") port **14** with corresponding lumens **20** and **22**, respectively, (col.7, line 62). These lumens permit blood to be drawn from the area of the superior vena cava (Fig.4) into the conduit **10** through port **16** and lumen **20** to a pump **24** (Fig.1), which outputs the blood through lumen **22** to infusion port **16** to located in the vicinity of the coronary sinus. Pump **24** pumps blood at a flow rate between 5 ml

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to 50 ml/minute (col.4, lines 16-17 and 47-48), well below applicant's "subcardiac" flow rates, defined in the specification as being 100 ml to 3 liters/minute (p.15, paragraph [0051]).

In regard to claim 10, pump **24**, may be configured to fit within conduit **10** (col.6, lines 51-54), thus making the pump implantable in the body.

In regard to claim 13, the Aldea pump is coupled to a micromotor (col.6, lines 50-52)(not shown) and is controlled by a "means for controlling pump" **24**. This control element **24** comprises a processor or microprocessor (col.7, lines 3-7), which must be programmed to operate properly.

Allowable Subject Matter

10. Claims 9, 12, and 14-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

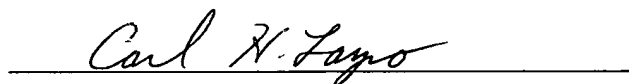
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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on Monday thru Thursday from 9 AM to 6 PM and every other Friday between 9AM and 5PM. A voice mail or E-mail message (carl.layno@uspto.gov) may be left if desired.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached on (571) 272-4955. All faxed correspondence should be sent to the Office's official FAX number (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Legal Instruments Examiner (LIE) Brenda Webb whose telephone number is (571) 272-4399.

A handwritten signature in cursive script, reading "Carl H. Layno", is written over a horizontal line.

CARL LAYNO
PRIMARY EXAMINER

CHL
5/5/2005